

Order

Michigan Supreme Court
Lansing, Michigan

February 6, 2009

Marilyn Kelly,
Chief Justice

136520
& (60)(62)(64)

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff-Appellee,

v

SC: 136520
COA: 272968
Ingham CC: 03-001755-CE

WATEROUS COMPANY,
Defendant-Appellant.

On order of the Court, the motions for leave to file briefs amicus curiae are GRANTED. The application for leave to appeal the April 15, 2008 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

YOUNG, J. (*concurring*).

The question whether the statute, MCL 324.20120a(6), requires the defendant to remediate the property to a level consistent with a higher use than the defendant's historical use of the property is troubling. I concur with this Court's denial order because the defendant did not preserve a constitutional taking argument.

MARKMAN, J. (*dissenting*).

I would grant leave to appeal to consider whether the Court of Appeals properly determined that a successor landowner can be required under the Natural Resources and Environmental Protection Act, MCL 324.20120a(6), to remediate property to its current residential zoning status even when that status is higher than the industrial zoning status that existed when the pollution occurred, and, if so, whether such a determination implicates US Const, Am V; Const 1963, art 10, § 2; or any other federal or state constitutional provision.

CORRIGAN, J., joins the statement of MARKMAN, J.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 6, 2009

Corbin R. Davis

Clerk